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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH CARBONE, ROBERT D. GREENLEE,
MARC A. KATCHAY, HARRY G. MORGAN, and SCOTT A. QUILLEN

Appeal 2010-011764
Application 09/582,297
Technology Center 2400

Before ALLEN R. MacDONALD, ERIC S. FRAHM, and
MICHAEL J. STRAUSS, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134(a) from final rejection of claims 1-27 and 37-60. Claims 28-36 and 61-69 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b). We *affirm*.

Introduction

The invention is directed to a method of asynchronously transferring a plurality of files between client and host devices is provided. The method includes transmitting to a client device a plurality of identifiers for files and transferring between the host and client devices a data frame that includes an identifier and at least a portion of the corresponding file. Each identifier corresponds to a different one of the files to be transferred. The method also includes repeating the data frame transfers until the plurality of files has been transferred. Abstract.

Exemplary Claim(s)

Exemplary claim 1 under appeal reads as follows:

> 1. A method of asynchronously transferring a plurality of data objects between client and host devices, the method comprising:
>
> transmitting a request for a data transfer session from a client device to a host, the request identifying a plurality of data objects to be transferred between the client device and the host;
>
> in response to the received request, transmitting from the host to the client device a plurality of identifiers for data objects, wherein each identifier is assigned by the host and corresponds to a different one of the data objects to be transferred;

transferring over a network between the host and client devices a data frame that includes an identifier and at least a portion of the corresponding data object; and

repeating the data frame transfers until the plurality of data objects have been transferred.

Rejection on Appeal [1,2]

The Examiner rejected claims 1-27 and 37-60 under 35 U.S.C. §102(e) as being anticipated by Bennett (US 6,963,923 B1, Nov. 8, 2005).

Issue

Based on Appellants' arguments, the following issue is presented: Did the Examiner err in rejecting independent claim 1 under 35 U.S.C. §102(e) as anticipated by Bennett because it does not disclose "transmitting a request for a data transfer session from a client device to a host, the request identifying a plurality of data objects to be transferred between the client device and the host." App. Br. 11, emphasis in original.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments (Appeal Brief and Reply Brief) that the Examiner has erred.

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[1] The rejection of claim 1 under 35 U.S.C. §112, second paragraph, was withdrawn post-issuance of the outstanding Final Office Action. *See* Ans. 3.

[2] Independent claims 1, 10, 17, 37, 45 and 51are argued collectively. (Merely restating with respect to a second claim an argument, previously presented with respect to a first claim, is not an argument for separate patentability of the two claims.) Separate patentability is not argued for claims 2-9, 11-16, 18-27, 38-44, 46-50 and 51-60. In view of the foregoing, we select claim 1 as representative of all the claims rejected under §102(e), and our analysis will only address claim 1.

We disagree with Appellants' conclusions. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief.

Appellants argue that because the initial client request according to Bennett only identifies a single profile that is later used to identify file components to be transmitted from the server to the client, it does not anticipate claim 1 requiring "transmitting a request for a data transfer session from a client device to a host, the request identifying a plurality of data objects to be transferred between the client device and the host." *See generally*, App. Br. 11, 13, emphasis omitted. That is, Appellants' allegation of error is based on a requirement that the request message itself include a plurality of identifiers of respective data objects. However, the argument is not commensurate with the scope of the disputed claim language and is otherwise not persuasive.

As explained by the Examiner (Ans. 4 and 7), Bennett's *x.pro* profile includes identifying information for a set of components of the requested file. The request transmitted by the client identifies the profile thereby also identifying the components identified by the profile and, therefore, "identifying a plurality of data objects to be transferred between the client device and the host" as recited by claim 1. That is, by identifying the profile, the request is also identifying the file components or "data objects" specified by the profile. Therefore, we find no error.

We further find that, because claim 1 does not exclude additional steps, it is otherwise sufficient that the transmitting step initiate any number of steps resulting in the request identifying a plurality of data objects to

anticipate claim 1. Because claim 1 does not exclude a multistep method of identifying the plurality of data objects as per Bennett, we also find no error.

Appellants further argue that claim 1 requires that the *client data transfer session request* must itself identify the data objects while Bennett "identifies data objects using transmissions that occur after initiation of the data transfer session between the client and the host." App. Br. 13. However, Appellants' specification does not define the meaning of "data transfer session" other than describing that it is initiated by the client sending a frame to the host to request a session (Spec. 8), where a frame is described as "a separately transferred message on the network 12" (Spec. 1.) Therefore, giving claim 1 its broadest reasonable interpretation consistent with the specification, the client initiated request for a profile transmitted to the server according to Bennett may be considered to be a request for a data transfer session between the two. Since it is this request, via the profile, that identifies the plurality of data objects, this feature is also taught by Bennett. Accordingly, Appellants' arguments do not persuade us that the Examiner has erred in rejecting claim 1.

CONCLUSION

Because we find that the reference discloses the disputed limitations, we conclude that the Examiner properly rejected independent claim 1 under 35 U.S.C. §102(e) as anticipated by Bennett together with claims 2-27 and 37 that fall therewith.

DECISION

The rejection of claims 1-27 and 37-60 under 35 U.S.C. §102(e) as being anticipated by Bennett is **affirmed**.

AFFIRMED

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